

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROMAINE MORGAN,

Plaintiff,

v.

SACRAMENTO COUNTY RIO
COSUMNES CORRECTIONAL
CENTER, et al.,

Defendants.

No. 2:24-cv-00333-EFB (PC)

ORDER

Plaintiff is a former county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2.

Application to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the court grants plaintiff leave to proceed in forma pauperis.

Screening Standards

Where a litigant has been granted leave to proceed in forma pauperis, the court must dismiss the action at any time if it "determines that the action or appeal—(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.S. § 1915(e)(2)(B).

1 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
3 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
8 U.S. 662, 679 (2009).

9 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
10 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
11 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
12 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
13 678.

14 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
15 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
18 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
19 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
20 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

21 Screening Order

22 Plaintiff alleges that, on December 7, 2022, while confined at Rio Cosumnes Correctional
23 Center (“the Jail”), he slipped and injured his knee and foot. ECF No. 1 at 15. Unidentified
24 officers who were present ignored plaintiff’s repeated requests for medical care even though
25 plaintiff told them he was in severe pain. *Id.* Plaintiff’s knee had suffered a previous injury due
26 to the shower shoes Jail staff had provided to plaintiff when he first arrived. *Id.* “Plaintiff had
27 repeatedly notified staff and even wrote grievances concerning the shower shoes and the danger
28 and risks that they posed, but received either no answer and/or was told that the facility would

1 look into it." *Id.*

2 After the second injury, staff directed plaintiff to write a medical report instead of
3 immediately calling for medical help. *Id.* at 13. Despite putting in a medical request on
4 December 7th, plaintiff was not seen until December 12, 2022. *Id.* The treating doctor, Vanessa
5 Tsuda-Nguyen (who is not a defendant here), ordered an x-ray, which was performed two days
6 later. *Id.*

7 Plaintiff was seen by defendant orthopedic specialist Dr. Andrew Ho four months later, on
8 April 28, 2023.¹ *Id.* Defendant Ho ordered an MRI, but plaintiff was told by an unidentified
9 person that it could take up to a year to get the test. *Id.* at 13-14. Plaintiff received the MRI at an
10 unspecified date after July 6, 2023.² *Id.* The test revealed a complex meniscus tear that required
11 surgery, but plaintiff had still not received the surgery as of January 2024. *Id.*

12 Plaintiff names as defendants Dr. Ho, the Rio Cosumnes Correctional Center, and Does 1-
13 10. However, as discussed below, plaintiff has not alleged facts showing that Dr. Ho cased the
14 delay alleged in the complaint or otherwise acted with deliberate indifference to plaintiff's
15 medical condition.

16 To succeed on an Eighth Amendment claim predicated on indifference to medical needs, a
17 plaintiff must establish that: (1) he had a serious medical need and (2) the defendant's response to
18 that need was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); see
19 also *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to
20 treat the condition could result in further significant injury or the unnecessary and wanton
21 infliction of pain. *Jett*, 439 F.3d at 1096. To act with deliberate indifference, a prison official
22 must both be aware of facts from which the inference could be drawn that a substantial risk of
23 serious harm exists, and he must also draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837
24 (1994).

25 _____
26 ¹ The complaint states this date as occurring in 2022. ECF No. 1 at 13. The court assumes that
27 the correct date occurred in 2023, as plaintiff states that the event happened four months after
December, 2022.

28 ² The complaint again places the July date in 2022, which the court presumes is a typographical
error.

1 Plaintiff alleges only that Dr. Ho did not see him until four months after his injury and that
2 Dr. Ho ordered an MRI that someone told plaintiff could take up to a year to obtain. Plaintiff
3 does not allege facts showing that Dr. Ho caused or was otherwise responsible for any delay in
4 plaintiff's appointment with him, or that Dr. Ho had any control or influence over when plaintiff
5 would receive the MRI. As there are no facts showing that Dr. Ho's response to plaintiff's injury
6 was deliberately indifferent, plaintiff's claim against him must be dismissed with leave to amend.

7 In addition, a municipal entity, like the jail, cannot be held liable under § 1983 solely
8 because it employs an individual who violated the Constitution. *Bd. of the Cnty. Comm'r's v.*
9 *Brown*, 520 U.S. 397, 404-05 (1997). If plaintiff wishes to impose liability on the jail (rather
10 than, or in addition to, individual persons responsible for denying him a proper mattress), he must
11 identify a county or jail policy or custom that caused a deprivation of his constitutional rights. *Id.*

12 Lastly, plaintiff has not identified the staff who provided him with inadequate shower
13 shoes and/or refused to provide adequate shoes or the staff who refused to call medical after his
14 second fall. The court cannot direct service of a complaint on an unknown party.

15 As plaintiff has failed to state a cognizable claim against the known defendants and the
16 complaint cannot be served on the unknown defendants, the court will provide plaintiff with an
17 opportunity to amend the complaint to attempt to salvage his claims against defendants Ho and
18 the Jail and to discover the identities of the unknown defendants through subpoena or otherwise
19 and to amend the complaint to state their identities. To proceed, plaintiff must either amend his
20 claims against Ho and the Jail or he must amend his other claims by naming a defendant (or he
21 may do both things in a single amended complaint).

22 Leave to Amend

23 If plaintiff chooses to file an amended complaint, he should note that any amended
24 complaint must identify as a defendant only persons who personally participated in a substantial
25 way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
26 Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,
27 participates in another's act or omits to perform an act he is legally required to do that causes the
28 alleged deprivation).

Further, any amended complaint must be written or typed so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

The court cautions plaintiff that failure to comply with the Federal Rules of Civil Procedure, this court's Local Rules, or any court order may result in this action being dismissed. *See* Local Rule 110.

Conclusion

Accordingly, it is ORDERED that:

1. Plaintiff's application for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.
2. Plaintiff's claims against defendants Ho and the Rio Cosumnes Correctional Center are dismissed with leave to amend within 120 days of the date of this Order.
3. Plaintiff has 120 days from the filing date of this Order in which to discover, by subpoena or otherwise, the identity of at least one Doe defendant and to assert a claim against such defendant in the amended complaint.
4. The Clerk of Court is directed to issue one blank subpoenas and send it, along with copies of the U.S. Marshal's Process Receipt & Return form (USM-285), to plaintiff.
5. Plaintiff shall complete the subpoena and USM-285 form and promptly return it to the Clerk of Court.
6. Upon receipt of properly completed subpoenas and USM-285 form, the Clerk of Court shall deliver the subpoena, the USM-285 form, and a copy of this Order, to the U.S. Marshal for service.
7. Within 20 days of receiving the subpoena, USM-285 form, and a copy of this Order, the United States Marshal must personally serve the subpoena and a copy of this Order

1 in accordance with the provisions of Rule 45 of the Federal Rules of Civil Procedure
2 and 28 U.S.C. §§ 566(c) and 1915(d).

3 8. Within 10 days after personal service is effected, the United States Marshal must file
4 the proofs of service.

5 9. The court may dismiss this action for failure to prosecute without prejudice if plaintiff
6 fails to file an amended complaint stating a cognizable claim against an identified
7 defendant within 120 days, unless plaintiff seeks and is granted an extension of time.
8 Failure to comply with any part of this this order may result in dismissal of this action.

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10 Dated: November 14, 2024


11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE

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